



**COMMUNITY DEVELOPMENT DEPARTMENT**

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## **PLANNING COMMISSION MEETING MINUTES**

**REGULAR MEETING**

**JUNE 11, 2002**

**PRESENT:** Acevedo, Benich, Engles, Lyle, Mueller, Weston

**ABSENT:** None

**LATE:** Escobar

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**STAFF:** Planning Manager (PM) Rowe, Director of Public Works (DPW)  
Ashcraft, Senior Engineer (SE) Creer and Minutes Clerk Amarel

Chair Acevedo called the meeting to order at 7:02 p.m.

### **DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Amarel certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Acevedo opened the public hearing.

With no one present wishing to speak, the public hearing was closed.

### **MINUTES:**

**MAY 14, 2002**

**COMMISSIONERS MUELLER/BENICH MOTIONED TO APPROVE  
THE MAY 14, 2002 MINUTES WITH THE FOLLOWING AMENDMENTS:**

- o Page 4, paragraph 2: last sentence is incomplete, need to be modified or deleted.**
- o Page 6, middle: column under "Total 2003/04" should read 23, 13, 13, 13, 13, 6, 5, 18, 7 & 111. The 2004/05 column should have the 5 changed to 8 and the 25 changed to 28.**
- o Page 6, bottom column under "Total 2003/04" should read 2, 21, 18, 11 & 52.**
- o Page 8, next to last paragraph: Following "one year", the words "after**

the last permits for the project are issued" should replace "of permits being issued".

- o Page 9, Church-So. County Housing, add paragraph stating that there should be handicap accessibility on Church St. side to at least the Community Center, and that handicap parking along the outer edges be put toward the inside so that handicap persons would not have to cross driveway.
- o Page 10, bottom paragraph, sentence 2 has typo, should read "of ten" and not "often"
- o Page 17, paragraph 3 has typo: "realizing" and not "readying"
- o Page 17, next to last paragraph: delete "wild"

#### **THE MOTION PASSED UNANIMOUSLY**

Chair Acevedo stepped down from the dias for this item in order to avoid possible conflict of interest. Vice-Chair Mueller assumed the gavel.

#### **OLD BUSINESS:**

- 1) UP-02-03:  
TENNANT-  
SAFEWAY** A request for approval of a conditional use permit to allow for the construction of a 12 pump gas station to be located at the south east corner of the intersection of Monterey Road and Tennant Ave. The proposed gas station will be located within the Tennant Station Shopping Center PUD.

PM Rowe presented the staff report, advising that this application was reviewed by the Planning Commission at the May 28th meeting. The Commission had requested completed copies of the traffic study and also requested that the following be added to the approval resolution:

Section 3.B: Use Approved. Include prohibition of sales of alcoholic beverages. Require second bathroom for separate men and women restrooms.

Add the following provisions to Section 3:

J. On and off-site traffic circulation to be reviewed by the Planning Commission six months after commencement of use.

K. No window signs (see Gateway PUD/CUP for specific language).

L. Use Permit to be reviewed by the Planning Commission one year following cessation of use/gas station closure for consideration of use permit revocation and gas station removal. (This provision relates to the exit clause approved by the City Council that requires the gas station to be removed one year after the gas station goes out of business, unless an extension of time to find a new tenant is approved by the City.)

M. Commencement of Use. The shopping center expansion shall be under construction and the new grocery store shall pass framing inspection prior to commencement of the fuel center use.

PM Rowe also requested amendment to Section 3.C of resolution regarding correction of time limitations to read 6/11/2003. He reiterated what was presented at the last meeting, indicating that the fuel center needs a signal at Church and Tennant, and that this is the only requirement directly related to the fuel center. He stated that the three other traffic mitigations are requirements of the entire shopping center and requested that if there are other mitigations that apply to the center as a whole, that the Commission adopt or approve these as recommendations to the ARB.

Vice-Chair Mueller requested traffic consultant, Kristiann Choy of Fehr & Peers Associates, 255 N. Market, #200 in San Jose, to address the Commission. Commissioner Lyle asked why the study shows the bulk of traffic staying on Monterey instead of turning out into Vineyard Blvd. Ms. Choy replied that if a driver has the green light on Monterey, that driver would be able to turn into the second driveway and that one can be as easy for a driver to turn into as the other. Commissioner Lyle had an issue with Vineyard, stating that staff added mitigation requiring a left-turn pocket, but notes that the number of vehicles going in and out stated in Figure 7 of the traffic study could be vastly understated. Commissioner Lyle also pointed out there is no long-term analysis and is again concerned with Vineyard, in that more traffic will be diverted from Monterey to Vineyard. He also added that pass-by traffic methodology can be deceiving and that when stopping at the shopping center, the impact on the intersection can be greatly affected. He stated the crux of the center will now be east of where it used to be. Ms. Choy stated that drivers would be using the same driveway and that existing traffic would not need to be rerouted.

Vice-Chair Mueller stated that the study shows a net increase of 8,000 sq. ft. of shopping center and that 8,000 sq. ft. generates 2800 trips at a rate of 300 daily trips. He inquired how Ms. Choy arrived at that level. Ms. Choy stated that when you calculate square footage, the high number is not relevant because it is supposed to be over the entire square footage and not over the change. Vice-Chair Mueller stated that the ratio/usage number bothers him and that the ratio is not close to the assumptions. Ms. Choy stated that you can't look at every driveway as a whole, because there will be split traffic depending on the driveways. Ms. Choy has an updated copy of the traffic survey with updated numbers which should answer these questions. Vice-Chair Mueller then stated that the General Plan has standard of D+ in the City; he has a problem with no standard for unsignalized D+, and that there is a need to develop an answer that might be satisfactory.

Commissioner Benich asked PM Rowe if the City have in prior years, ever gone back after approving the consultant's traffic report, and checked a year later to see if it was legitimate. PM Rowe stated that they have done that as a review of traffic conditions. He added that the shopping center is already there and there is not that much square footage being added. They are remodeling, not adding new buildings per se.

Vice-Chair Mueller opened the public hearing.

Jeff Lee, EDA, San Luis Obispo, gave an update of the last meeting, stating that the amendments have gone to preliminary review by the ARB, including the suggestion by Commissioner Engles to have separate men and women restrooms. Commissioner Weston inquired what the use of the additional unaccountable 190 sq. ft. will be. Mr. Lee

stated it is being used as an electrical closet and storage area. Vice-Chair Mueller asked for the square footage for the whole entire shopping center. Mr. Lee stated 252,000 sq. ft. Commissioner Escobar noted that the executive survey indicated 257,100 sq. ft. PM Rowe stated that there is a 103 sq. ft. difference being proposed.

Todd Parrish (no address given on speaker card) stated that this will be the first fuel center to have public restrooms. Mr. Parrish finds generally that 50% of the customers don't come into the kiosk area, only the cash customers. Mr. Parrish feels that one restroom will handle the very small sales area and wanted to know if that was a major issue with the Commission. Commissioner Weston asked how many service stations they have now and Mr. Parrish stated they have 160 of which 9 have restrooms, noting that the proposed restroom is slightly larger so that it is accessible to the general public.

With no others present wishing to address this issue, Vice-Chair Mueller closed the public hearing.

Vice-Chair Mueller stated he wanted to deal with the use permit and with the ARB concerning larger center. Commissioner Engles wanted to discuss the proximity of the kiosk and the necessity to cross Monterey or Tennant to utilize Safeway's restrooms. He thinks these could be high traffic areas. He also stated that he thinks it would be nice to have two separate restrooms. Commissioner Benich agreed that two restrooms would be nice, but stated they conceded to have one restroom and that they should go with that. Commissioner Weston wanted to add a cleanliness condition. Vice-Chair Mueller concurred that this is a good comment to send to the ARB.

Commissioner Lyle stated that Item J calls for a 6 month review. He indicated that because there is a substantial risk of some of the traffic numbers being understated, he would like to see the Commission request a new traffic report in a specified number of months after the Safeway opening and the 101 widening. The Commission asked for a full traffic report and modification of traffic mitigations as necessary in the Fall of 2003. Vice-Chair Mueller suggested sending an updated request to ARB to put on entire shopping center to ensure better nexus than just on the fuel center. Commissioner Weston noted that the shopping center will take longer to build than the fuel station.

PM Rowe stated that with respect to Item J, the subsequent traffic report will be after the Safeway opening and Hwy. 101 widening completion. Commissioner Escobar stated it seems that without firm information about the Butterfield Blvd. extension and Hwy 101 completion, this is too nebulous and should review the use permit regarding the traffic report based on a firm date. PM Rowe stated this is reviewed on an annual basis, and that Hwy 101 should be completed a year from now and Butterfield more than a year from now. Commissioner Lyle stated this should be the Fall of 2003. Vice-Chair Mueller recommended amending directions to ARB regarding the quality level of the unisex restroom and changing Item J wording.

**COMMISSIONERS LYLE/BENICH MOTIONED TO APPROVE RESOLUTION NO. 02-38, WITH AMENDMENT OF SECTION 3.J MODIFYING LANGUAGE TO INCLUDE A FULL TRAFFIC REPORT AND REVIEW OF MITIGATIONS TO SEE IF A REVIEW OF THE MITIGATIONS WILL BE NECESSARY, AND A**

**SUBSEQUENT FULL TRAFFIC REPORT BE DONE THE FALL OF 2003 OR SIX MONTHS AFTER SAFEWAY IS COMPLETED, THE COMPLETION OF BUTTERFIELD BLVD. EXPANSION AND COMPLETION OF THE WIDENING OF HWY 101; ADD QUALITY LEVEL UPSCALE UNISEX RESTROOM; AND AMEND SECTION 3.C TO CHANGE THE TIME LIMITATION FROM MAY 28, 2003 TO JUNE 11, 2003. THE MOTIONED CARRIED ON A VOTE OF 6-0-0-1 AS FOLLOWS: AYES: BENICH, ENGLS, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO.**

**COMMISSIONERS LYLE/ESCOBAR MOTIONED TO PROVIDE DIRECTION TO THE ARCHITECTURAL REVIEW BOARD TO REVIEW THE QUALITY LEVEL OF THE UNISEX RESTROOM TO ENSURE THEY ARE UPSCALE; AND ADD ABOVE MODIFIED SECTION 3.J LANGUAGE. THE MOTION CARRIED BY A VOTE OF 6-0-0-1 AS FOLLOWS: AYES: BENICH, ENGLS, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO.**

Commissioner Acevedo returned to the meeting and resumed the gavel.

**NEW BUSINESS:**

**2) GPA-01-09:** This is a City-initiated request to approve a new Housing Element of the General Plan.  
**CITY OF M.H.-** The proposed Element represents a comprehensive statement of the City's current and  
**ADOPTION OF** future housing needs and proposed actions to facilitate the provision of housing to meet  
**HOUSING** the needs of all income levels. The Element has been prepared in such a way as to meet  
**ELEMENT** the requirements of State law and to meet local housing objectives.

PM Rowe reported to the Commission that in March 2001 the City received comments from the State Department of Housing and Community Development (HUD), and overall HCD found the draft Housing Element to be well written and with few exceptions to State law. In April revised language was sent to HCD for an informal review and to-date we have not received a response from HCD. Therefore, PM Rowe stated that staff recommends this item be tabled and rescheduled before the Commission upon receipt of the comments from HCD.

Vice-Chair Mueller expressed that there is a need to implement this Housing Element sooner rather than later without waiting for the comments from the State, which could take six to eight months, especially since the initial review was fairly clean and since a lot of cities who don't have Housing Elements in our shape and they get first priority in the State staffing level. He stated that he felt the Commission needs to approve it and move forward.

PM Rowe indicated that it is not the intention of staff to wait six to eight months to bring the Housing Element back before the Commission for consideration.

Chair Acevedo opened the public hearing.

There being no one else present who wished to speak, the public hearing was closed.

**VICE-CHAIR MUELLER AND COMMISSIONER WESTON MADE A MOTION TO TABLE THE HOUSING ELEMENT APPLICATION. THE MOTION PASSED UNANIMOUSLY.**

Upon the request of Vice-Chair Mueller, Item #5 was heard at this time by the Commission.

Commissioner Weston excused himself for the next item of business due to a possible conflict of interest.

**5) UP-02-04:  
MONTEREY-  
MORGAN HILL  
CHARTER  
SCHOOL**

A request for approval of a conditional use permit to allow for a 18,160 sq. ft., K-8 public charter school in the Morgan Hill Plaza shopping center located at 16975 Monterey Rd. The school would accommodate up to 300 students. The project site is zoned Planned Unit Development.

PM Rowe presented the staff report, stating that the applicant applied for a Temporary Use Permit in August 2001 to allow for the operation of a public charter school, for which they received Commission approval in September 2001. During the same time, the City Council approved Ordinance 1531, amending the commercial portion of the Morgan Hill Plaza Planned Unit development, permitting public and quasi-public buildings and uses. PM Rowe noted that this is not a permanent location for the school, and that their lease runs for another two years, at which time they plan to relocate. He stated that the school has functioned adequately on the site since they moved there during October 2001, and indicated staff recommendation for approval of the use permit to allow the school to operate beyond the current expiration date of August 2002, subject to the findings and conditions outlined in the staff report.

Chair Acevedo requested clarification of the actual location of the main entrance of the school. PM Rowe replied that he believed it to be located at the front of the facility.

Chair Acevedo opened the public hearing.

Mary Smathers, Director of the Morgan Hill Charter School, addressed the Commission, providing a review of the School's past-year operation and goals achieved. Ms. Smathers clarified the School's site usage as follows: Staff park in the back parking lot off of Ciolino; parents dropoff and pickup in a supervised drive-thru area off of Ciolino and also by the gate on Del Monte; and walk-ins and parents who are going to stay for an appointment or other business, park in the front of the School. There is no dropoff or pickup in the front of the School, because of the fire lane. The School actually have three entrances and no real "main" entrance. Ms. Smathers stated she felt the School is a positive force in the Shopping Center and neighborhood, adding that there has been increased, positive business traffic in the Shopping Center, and they have not received any parking or traffic complaints while there from any of the other businesses or residential neighbors. In fact, the businesses have responded very favorably to the Charter School being there. She continued by stating they have provided a neighborhood school for the Via Ciolino Apartments right across the street and the Del Monte Apartments down the street from the school, and are providing educational options for local families. In conclusion, Ms. Smathers said that they look forward to working with the Commission and the City, and that the School has a task force in the process of looking for a longer term, permanent site. She then addressed questions from the Commission.

Commissioner Lyle asked how the School handles parking for major assembly, such as for back-to-school night or other family events. Ms. Smathers stated that most of those events are held during the evening when very few of the businesses are operating, and for those

events, they have permission to enter through the front door and park in the front. She added that the other businesses have asked that the School advise them when they have such events, so if they wish, they may stay open longer and be available to the families.

Commissioner Escobar queried Ms. Smathers as to the number of students the School has enrolled from the neighborhood apartments; the number of vehicles dropping off and picking up students; the number of students that carpool; geographic location where preponderance of students live; and the percentage of students that are enrolled from outside Morgan Hill area? Ms. Smathers responded that they enroll four to five families from the Via Ciolino Apartments, only a couple of families from the Village Avante Apartments, and they are currently trying to recruit more families. She was unsure of the actual number of vehicles dropping off and picking up students, as the cars turnover very fast and are spread out, but said she believes that more than half of the students carpool. Other than Morgan Hill, Ms. Smathers estimated that 10% of the students enrolled in the School are from Gilroy, Salinas, Aromas, San Juan Bautista and South San Jose. She also noted that a Charter School is a public school that is open to any students within the State of California by State law.

Chair Acevedo asked for clarification of the School's staffing levels indicated in the staff report. Ms. Smathers stated that the staffing levels noted are projected, i.e. 14 full-time employees, 9 part-time employees and 15 parent volunteers at any given time.

Commissioner Escobar inquired as to whether the Charter School's current student-to-staff level ratio is within the State law requirements, to which Ms. Smathers replied yes, and that they are currently at 20:1 for grades K-3 and 25:1 in upper grades, which is well under most public school districts.

There being no one else present who wished to speak, Chair Acevedo closed the public hearing.

Commission discussion ensued. Commissioner Benich stated that he had an initial concern regarding the 50% increase in parking until Ms. Smathers clarified that issue. He also added that he would object to a permanent situation of using a chain link fence as part of the project improvements, but since it is temporary that he is ok with it.

Chair Acevedo expressed concern with the lack of parking available during the lunch hour times in the Shopping Center. He expressed that he felt the problem has to do with the kindergarten pickup time, and suggested that all kindergarten pickups be done in the back of the School; or the kindergarten pickup time be changed to 11:30 a.m. or 1:30 p.m., which would be outside the lunch time hours. Vice-Chair Mueller stated that he thinks the kindergarten pickups are in the back of the School and that the Center is just getting busier and has nothing to do with the kindergarten pickup time. PM Rowe stated that he felt the lunch hour parking situation is the result of the over-concentration of restaurants in the Center. Chair Acevedo requested for the record that an eye be kept on the parking situation of the Shopping Center during the lunch hour times to see if any patterns exist.

**VICE-CHAIR MUELLER AND COMMISSIONER ESCOBAR MOTIONED TO APPROVE RESOLUTION NO. 02-06, APPROVING THE CONDITIONAL USE PERMIT, UP-02-04: MONTEREY-MORGAN HILL CHARTER SCHOOL. THE MOTION PASSED 6-0-0-1 BY THE FOLLOWING VOTE: AYES: ACEVEDO,**

**BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: WESTON.**

Commissioner Weston resumed his seat at the dias.

**3) ZA-01-15/  
SD-01-10  
COCHRANE-  
COYOTE  
ESTATES**

A proposal to re-zone and subdivide a 28-acre parcel into 50 residential lots with a tennis court park and an open space area in an existing Residential Planned Development known as Coyote Estates located east of Hwy 101 at the northwest corner of the intersection of Cochrane Rd. and Peet Rd.

PM Rowe presented the staff report and noted the following amendments to the Subdivision Resolution No. 02-43 standard conditions of approval: Page. 4, delete item g.5 (Mello Roos), as this does not apply to this phase of the Subdivision application; and on page 6, delete item l.5 (requirement for fire sprinklers). Commissioner Weston questioned whether it was correct on page 6 of the conditions of approval, that item #l.3 (requirement for a demolition permit for structures 50 years or older) should be required. PM Rowe deferred the response to the applicant to confirm whether there are any structures 50 years or older on the property. He also clarified that on page 3 of the staff report, the listed items under “circulation/street improvements along Cochrane Road” are not improvement costs to be fully burdened by this project, but that the project will contribute **it’s fair share** of the cost of the improvements. PM Rowe offered staff’s recommendation to the Commission to adopt the expanded list of mitigations to be incorporated into the existing mitigated negative declaration, to approve the Residential Planned Development (RPD) amendment, and to approve the Tentative Map.

PM Rowe then addressed questions from the Commission, confirming that what was actually being adopted in the expanded RPD is the entire west side of Peet Road. Commissioner Lyle expressed some confusion with the request, as the maps did not show the R1 12,000 lots nor did Resolution No. 02-42 make mention of changing the underlying zoning. PM Rowe pointed out that the staff report makes mention that the applicant is seeking a zoning amendment to increase the minimum lot size from R1 9,000 to R1 12,000 with a residential planning development overlay, but agreed that the resolution on hand was too limiting. However, he stated that the entire Section 5 of Resolution No. 02-42 could be modified to include language to read “to rezone the property from R1-9000 to R1-12,000, establishing a precise development plan to reflect the total build out of the Coyote Estates Development”.

Chair Acevedo opened the public hearing.

Dick Oliver, 275 Saratoga Avenue, #105, Santa Clara, and applicant, clarified inquiries from the Commission. Mr. Oliver stated that several years ago they did the General Plan change and were also requested at that time to change the zoning in this area from 9,000 to 12,000 sq. ft. lots. He said he actually thought they had completed the zoning change to R1-12,000, but not the RPD for this phase. Mr. Oliver confirmed that 9,000 sq. ft. is the minimum lot size in the project, and added that he actually gave up a number of units on the west side of Peet so that the whole project would be more consistent with the transition of zoning, based on City Council direction. He stated the reason why they added this section of the property was due to the realignment of Peet Road. Mr. Oliver also addressed Commissioner Weston’s question regarding trees on the property, stating that there are quite a few significant walnut trees and two major oak trees that are being saved, and one dead oak tree that is being removed. Mr. Oliver pointed out additional amendments to the application title and file



number at the top of pages 2, 3 and 4 of the staff report; and recommended a correction to amend paragraph 7.B.2 (biological resources) on page 4 of the negative declaration which requires the need for a burrowing owl study. He stated that a burrowing owl study has already been done. He noted he is a member of The Burrowing Owl Committee and that the City is charged with updating and coming up with a City-wide owl mitigation program. Mr. Oliver indicated that the commitment should read "that they can fulfill the mitigation requirements by meeting the adopted mitigation plan for the City and if it is not adopted by the time they pull the building permits, then they will have to follow the noted mitigations". That would give them a chance to comply with the new mitigation measure that's going to be adopted by the City. He added the committee has been waiting to meet with the State and the Audubon Society for ten months.

PM Rowe stated that he hesitates changing the language because this is part of the interim agreement staff has worked out with Fish and Game, and that he would need to review that agreement. If the reconnaissance survey determines that owls don't exist on the site, generally the requirement for the replacement habitat go away and the only requirement that's left of the mitigation would be 7.D, which is the preconstruction survey that's done. Mr. Oliver stated that he would appreciate that if it's possible.

There being no one else present who wished to speak, Chair Acevedo closed the public hearing.

The Commission entered discussion. Commissioner Benich expressed that he has a real problem with the fact that the City does in fact have a burrowing owl task force in place and the Commission is not reflecting that in this negative declaration as the applicant correctly states. He indicated that if you look at page 4, item 7, even though there are no burrowing owls, it still says that there might be some day a burrowing owl who might want to go on that land and the mitigation techniques still have to be done. He continued by stating that he sees no problem with the Commission putting a statement in the negative declaration that does reflect the fact that either the applicant do this or comply with the City's general burrowing plan to be adopted. It seemed to him that it is putting an undue burden on this applicant and all the other applicants who may be in a similar situation.

**VICE-CHAIR MUELLER AND COMMISSIONER LYLE MOTIONED TO APPROVE THE MITIGATED NEGATIVE DECLARATION, WITH MODIFICATION TO THE PROPERTY DESCRIPTION ON PAGE 1 TO REFLECT THE OVERALL BUILDOUT OF THE COYOTE ESTATES DEVELOPMENT, AND TO ADD A SECTION 7.E ON PAGE 5 THAT REFLECTS THAT THE APPLICANT CAN UTILIZE THE CITY-WIDE BURROWING OWL PLAN IF ADOPTED BY THE CITY. THE MOTION CARRIED UNANIMOUSLY.**

**VICE-CHAIR MUELLER AND COMMISSIONER ESCOBAR MOTIONED TO APPROVE ZONING AMENDMENT RESOLUTION NO. 02-42, WITH MODIFICATION TO THE TITLE THAT REFLECTS THE PRECISE DEVELOPMENT PLAN FOR THE ENTIRE WEST SIDE OF PEET ROAD; MODIFY SECTION 5 SO THAT IT ALSO REFLECTS THE PRECISE DEVELOPMENT PLAN; CONFIRM ACCURACY OF THE JULY 31, 2001 DATE IN SECTION #5; ADD A NEW SECTION 6 TO CHANGE THE ZONING FROM R1 9,000 TO R1 12,000 RPD; AND RENUMBER SECTION # 6 TO SECTION #7. THE**

**MOTION PASSED BY A UNANIMOUS VOTE.**

PM Rowe recommended deletion of standard condition G.5 (Mello Roos) on page 4 and L.5 (requirement for fire sprinklers) on page 6.

Commissioner Lyle noted the following required modifications to the standard conditions of Resolution No. 02-43: 1) Page 1, A.2, correct date to be 2004 not 2002; page 8, N.2 and page 14, Other Condition #4, include Miwok Court. He also commented that when he reads the standard condition paragraph on page 7, M.12 (impact fee increase), it almost precludes the City can adopt a whole new schedule. He suggested, that at some other time, since the City is in the process of adopting a new fee schedule, that this standard condition should probably be reworded to reflect the fact that, not only can those fees change because of cost changes, but also because of adoption of new fee schedules.

Commissioner Weston suggested adding standard condition B.1 (professional arborist evaluation) on page 1, based on Mr. Oliver's statement that some of the trees on the project property will be saved and others will not.

Vice-Chair Mueller recommended adding standard condition B.2 (CC&Rs) on page 1.

**VICE-CHAIR MUELLER AND COMMISSIONER WESTON MOTIONED TO APPROVE SUBDIVISION RESOLUTION NO. 02-43, WITH THE ABOVE NOTED MODIFICATIONS. THE MOTION CARRIED BY A UNANIMOUS VOTE.**

**4) ZA-01-16/  
SD-01-11:  
COCHRANE-  
MISSION VIEW**

A proposal to amend the precise development plan and subdivide a 9.2-acre portion of the project into 24 units which will represent phases 5 & 6 of the Mission Ranch project located on the south east corner of the intersection of Cochrane Rd. and Mission View Dr.

PM Rowe presented the staff report and then reviewed the necessary amendments to the Subdivision Resolution No. 02-45 standard conditions of approval as follows: Page 7, delete item L.5 (requirement for fire sprinklers); and on page 18, delete Other Condition #16 (Mello Roos), as these were required as part of an earlier phase of this project. With those modifications, PM Rowe recommended action by the Commission to approve the mitigated negative declaration, followed by the adoption of Resolution No. 02-44 (amendment of the precise development plan) and Resolution No. 02-45 (subdivision map approval).

Chair Acevedo opened the public hearing.

Dick Oliver, 275 Saratoga Avenue, #105, Santa Clara, and project applicant, advised the Commission that the precise development plan before them was approved two years ago when he did phases V and VI. He stated there is no change from what was shown on the last site plan that was approved two years ago, but for some reason he has to go through this process every year when he does a continuing phase. He added that any further delay would be disastrous, as the project has been hung up since July 2001, working with outside consultants and the City in trying to get the traffic report and burrowing owl study. Mr. Oliver concluded by stating that he has not been able to submit the working drawing for the improvement plans because City Council approval of the tentative map must occur first, and the eight months waiting to get things done has thrown the whole project out of kilter.

PM Rowe provided the Commission and the applicant an explanation of why an application for amending the precise development plan is required. Commissioner Lyle stated that the existing development plan **does** need to be amended because there are four more units. He indicated the last sentence of the property description of the mitigated negative declaration should be deleted, as it reads “.... an amended development plan will cover from Phase 5 to completion”. Phases 5 and 6 are already covered in the existing development plan. Commissioner Lyle stated the project development plan is amended each time the project get a new allotment, and pointed out that the additional four units will also need to be included in the property description of the negative declaration.

There being no others present who wished to speak, Chair Acevedo closed the public hearing.

**VICE-CHAIR MUELLER AND COMMISSIONER WESTON MOTIONED TO APPROVE THE MITIGATED NEGATIVE DECLARATION, WITH THE DELETION OF THE LAST SENTENCE OF THE PROPERTY DESCRIPTION ON PAGE 1, AND INCLUDING THE ADDITIONAL FOUR UNITS TO THE PROPERTY DESCRIPTION. THE MOTION CARRIED UNANIMOUSLY.**

Commissioner Benich asked specifically if mitigation measures # 1 (effective fence) and #16 (6 ft. high masonry sound wall) would also be going before the Architectural Review Board (ARB) for review, because his concern is looking to continually raise the bar of our City to ensure they keep working in the direction of its beautification. PM Rowe responded that this negative declaration reflects mitigations that were initially put in place and accomplished as part of phases 1 and 2 of the project, so there already is a landscape barrier and an architecturally enhanced built sound wall for this project.

**VICE-CHAIR MUELLER AND COMMISSIONER WESTON MOTIONED TO APPROVE ZONING AMENDMENT RESOLUTION NO. 02-44. THE MOTION CARRIED UNANIMOUSLY.**

It was noted that this Resolution No. 02-44 may go completely away if in fact that RPD for the whole project has already been accepted.

Commissioner Lyle pointed out amendments to the standard conditions for Resolution No. 02-45 as follows: Add Peet Road to page 9, item N.2 and to item #23 on the last page.

**VICE-CHAIR MUELLER AND COMMISSIONER WESTON MOTIONED TO APPROVE THE SUBDIVISION RESOLUTION NO. 02-45, WITH THE FOLLOWING AMENDMENTS: PAGE. 7, DELETE ITEM L.5 (REQUIREMENT FOR FIRE SPRINKLERS); PAGE 18, DELETE OTHER CONDITION #16(MELLO ROOS); ADD PEET ROAD TO PAGE 9, ITEM N.2; AND ON THE LAST PAGE, ADD PEET ROAD TO ITEM #23. THE MOTION CARRIED UNANIMOUSLY.**

**6) ELBA-02-02:** A request for an Exception to Loss of Building Allocation (ELBA) for five building allotments within a single-family, attached project located north of Central Avenue, between McLaughlin Avenue and the railroad tracks.  
**MCLAUGHLIN-JONES**

PM Rowe provided background information of the project for the benefit of the newer

Commissioners, followed by the presentation of the staff report, where he indicated that the applicant is requesting the ability to get an extension, citing the extended City processing delays of the precise development plan, subdivision and development agreement applications. PM Rowe noted that a portion of the time that was consumed was a result of the desires on the City's part to have the zoning expanded to encompass a larger area and to proceed with a different map. He added that there was also time that can be attributable to delays of the applicant, as they were tardy in getting their initial applications into the City and were reluctant to make the requested changes. PM Rowe said one thing that everyone agreed on was that this is a good project, it's in a good location for this type of development (fairly near downtown), and it would really improve the area. He advised the Commission that under the circumstances, it is felt the appropriate action would be to recommend to Council an exception to loss of building allocation which would extend the deadline to commence construction of the five Measure P allotments from June 30, 2002 to June 30, 2003. PM Rowe then responded to several questions from the Commission.

Chair Acevedo opened the public hearing.

Jerry Jones, 16532 Mira Bella Place, and project applicant, advised the Commission that he submitted his application for the 5-lot subdivision in April of last year. Then in August he submitted an RPD overlay and a lot line adjustment for 4 existing lots, combining the 4 lots with the 5 lots that he had to make a total of 9. He stated that he then went to Commission and Council meetings, which kept getting postponed, and then was asked to do an RPD overlay for his entire project. Mr. Jones said he submitted the application for that request in February 2002 and there was no action taken on it, so now, basically, he has to go back and take all the plans he has submitted and merge them as one, and then do a complete resubmittal showing an RPD overlay for the entire site.

Commissioner Lyle asked Mr. Jones if he gets the extension, what are his plans to achieve this in one year? Mr. Jones responded that he would be under construction within one year. PM Rowe added that there would be a new development agreement application that would come before the Commission, which would include the development schedule for their approval.

There being no one else present who wished to speak, Chair Acevedo closed the public hearing.

Commissioner Lyle stated that because there has been a number of delays on this project, he was a little troubled by having a resolution for a one-year exception to loss of building allocation without at least some dates on it, other than just the very end date of June 30, 2003. He said that always before on an ELBA the Commission has set dates with intermediate check points, which are not indicated in this case. He requested the addition of at least one date in Section 3 of the resolution which would extend the deadline to pull permits by 4/1/2003.

**VICE-CHAIR MUELLER AND COMMISSIONER ENGLES MOTIONED TO APPROVE RESOLUTION NO. 02-47 FOR THE EXCEPTION TO LOSS OF BUILDING ALLOTMENT FOR MP-00-03:MCLAUGHLIN-JONES, WITH THE MODIFICATION OF THE WORDING OF SECTION 3, LINE 3 TO READ "....., EXTENDING THE DEADLINE TO PULL PERMITS BY 4/1/2003 AND**

**COMMENCE CONSTRUCTION OF THE FIVE MEASURE "P" UNITS FROM JUNE 30, 2002 TO JUNE 30, 2003". THE MOTION PASSED 6-0-1-0 BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, MUELLER, WESTON; NOES: NONE; ABSTAIN: LYLE; ABSENT: NONE.**

- 7) ELBA-02-03:** A request for an Exception to Loss of Building Allocation (ELBA) for four building allotments on a 2.15-acre site located on the northeast corner of the intersection of E. Dunne Ave. and Hill Rd.  
**E. DUNNE-GREWAL**

PM Rowe presented the staff report. He reminded the Commission that at the May 14<sup>th</sup> meeting they took no action with respect to a recommendation on a rescission on the allocation, but instead they recommended that the applicant proceed with the extension of time. At that time, the Commission established two milestones that needed to be achieved in order for them to have a favorable recommendation to the City Council for the extension. The first was the final map application with the improvement plans needed to be submitted to the Public Works Department for processing; and secondly, the plans need to be revised and be in a completed form for the ARB to consider and take action on. PM Rowe stated the applicant has not been able to achieve either of those two milestones at this juncture. He added that staff held a productive meeting with the architects yesterday, where they went through in detail what is necessary from them to get those plans into a form that would be possible for the ARB to take action. PM Rowe said he was also advised yesterday by the applicant's engineer, Hans Mulberg, that just the final map had been submitted to Public Works, but it would be about one to two months before the subdivision improvement plans (onsite and offsite public improvements) would also be ready for submittal.

PM Rowe continued by stating that based on the fact that the project has not achieved the milestones that the Commission felt were appropriate to result in any affirmative or positive recommendation, the staff is recommending that the extension not be approved, which essentially means the allocations go away at the end of the month. He indicated if the desire is to try to preserve these allocations so that if the applicant is not able to proceed, it can be made available to another applicant. There is one builder who could use one or possibly two allocations and commence by the end of the month. As far as the other projects that would be next in line, they have indicated they will generally need a 30-45 day extension. PM Rowe noted as an alternative, the Commission could recommend the exception with an extension and incorporate a hard deadline for the two milestones that have to be accomplished. If the applicant fails to achieve the specified deadline, the Commission would then recommend the Council rescind the allocations. Since the allocations have not been extended, there is enough time for a next-in-line project to be able to incorporate those unused allocations into their development. That would give the applicant one last chance.

Commissioner Lyle asked if all the problems that were mentioned at some of the other meetings with respect to county roads and drainage have been resolved with the County? PM Rowe responded that they have not and that's why he thinks Mr. Mulberg estimates are about one to two months. Commissioner Lyle stated "so that's pure guess work, because we have had much longer delays than that for county roads". PM Rowe replied in the affirmative.

Chair Acevedo opened the public hearing.

Hubert Varda, 1220 S. 2<sup>nd</sup> St., San Jose, advised the Commission that he is working on the architectural planning for this project. He stated that he is working very hard on this project and that he was asked to revise the elevations, which he took care of and submitted on May 24<sup>th</sup>. He indicated that during the meeting with staff yesterday he was asked to make a few more minor changes, which he feels they could correct and resubmit to the City by the next two weeks, along with all the other information requested.

Vice-Chair Mueller confirmed with Mr. Varda that he could have a complete application ready for ARB review by June 24<sup>th</sup>, and he replied yes. PM Rowe indicated that the ARB had tabled the site review application, rather than continuing it to their next meeting date. Therefore, staff will need to re-advertise the item to go back before the Board, which means even if the plans are submitted to us in time to have the Board consider it, it won't occur until their first meeting in July, at the earliest.

Hans Mulberg, 1150 B William St., San Jose, of Survey Construction Staking Co., Inc. and project engineer, addressed the Commission. He stated that it's difficult to talk with the Water District and PG&E without having a plan, but he thinks he can probably have the plan into the City for checking in two weeks. He reiterated that the final parcel map has already been submitted to Public Works, and that it's just a matter of getting the improvement plans in to complete the package. He continued by stating that he's sure there will be changes, so if the allotment is extended to December 30<sup>th</sup>, that may be pushing the envelope a little bit. Extending the allocation to next June or a year would be more realistic. His concern is that they will go through all this and then find out that they still can't pull the permits by December because they are still waiting for the agencies to complete their plan checks.

Mr. Mulberg then responded to questions from the Commission. Also, in an attempt to validate his understanding and commitment at the May 14 meeting that he was to provide the final parcel map to the Engineering Department, and not a complete application, Mr. Mulberg provided PM Rowe with a letter he received from staff dated May 15 listing the items required in order for the Commission to consider recommending approval of the exception if completed by June 11, 2002. PM Rowe shared the letter with the Commission.

Chair Acevedo closed the public hearing, as there were no others present who wished to speak to the matter.

Commission discussion ensued. Commissioner Weston expressed concern that Mr. Mulberg didn't act until 20 days after receiving the letter on May 16 from staff. PM Rowe stated that Mr. Mulberg did contact Therese Schmidt, the Planning Department contract planner, about meeting to go over these items. Because they wanted the meeting to include him, it was delayed until his return from vacation. Therefore, the earliest opportunity they were able to meet was yesterday. Mr. Mulberg had actually contacted Ms. Schmidt about two weeks ago.

Commissioner Weston then commented that he felt that the City somewhat implied that this ELBA could still be extended by just having the meeting and going forth and making suggestions for the applicant to proceed. He also commented that he has questions about projects that are really poorly put together on paper, which generally mean that they are poorly put together out in the field. Commissioner Weston added that the project is located at an interesting corner with a lot of activity and is seen by a lot of people, so this location

would not be great if it turns out to be poorly maintained or poorly landscaped.

Vice-Chair Mueller suggested, because of his concern about these allocations going away and because he thinks there are people who can use them, that the Commission recommend an extension for six months, which is what Resolution No. 02-49 does. He also suggested adding a hard date for the approval of the ARB application, and for the final map application to at least be complete and at the City in 60 days.

PM Rowe recommended a hard date for the engineer to complete the improvement plan drawings to be processed. He added that what we want is to get to the point where staff has those plans so they can be re-routed and can start getting the necessary approvals from the other agencies. If they are not able to meet those hard dates, then that would be the point at which the Commission would recommend revocation.

Commissioner Weston stated that he thinks the extension should be two months, with a hard date that everything be at least submitted and the process started within two months. He added that there is no guarantee that they are going to be successful in the ARB approval the first time, nor is there any guarantee as to when it will be approved by the County.

Vice-Chair Mueller then suggested that the Commission recommend that both applications be completed within 30 days, and if they are not deemed complete within 30 days, the Commission then schedule a hearing to revoke the allocation. Commissioner Weston asked if the Commission could place a condition in the resolution tonight that if the 30-day deadline is not met, then the allocation would be revoked? PM Rowe explained that under the Measure P Ordinance, the rescission of the allocation would be after a hearing is conducted by the City Council. He indicated that the Commission, as part of the action tonight, could set the 30-day deadline for the applications and indicate if it is not met, then recommend Council schedule a hearing for the rescission of the allocation. PM Rowe continued by saying that he felt it would be appropriate for the ELBA to come back before the Commission for them to forward a recommendation to Council indicating where those allocations should go. Vice-Chair Mueller concurred.

Commissioner Lyle stated that he did not think that there was any way that the project could get going in six months, even if they were able to meet the 30-day deadline with both the applications. He said that if the applicant was going to be given a chance to continue and achieve this, he would need to be given more than a six-month extension. With that being said, Vice-Chair Mueller suggested a 9-month extension.

Commissioner Benich stated that he did not have a good feeling about the project at all. He continued by saying that he thinks the Commission has worked with this applicant for a long time, he does not see the quality coming back, and he felt that the Commission is spinning their wheels. He stated that he backed staff's recommendation to deny the extension because he'd had it!

Vice-Chair Mueller reiterated that if the extension was denied, the allocations would be lost and that there are other projects who are starving for allocations who can use them.

Commissioner Lyle commented that he had mixed emotions about the request, in that his fear is that the applicant is going to continue to spend money and then it still does not happen

or happen well. To some degree he feels like maybe the Commission should just cut the cord right now, because the more money the applicant spends, the more obligated the Commission is to go all the way to the end with the project.

**VICE-CHAIR MUELLER AND COMMISSIONER WESTON MOTIONED TO APPROVE RESOLUTION NO. 02-49, FOR THE E. DUNNE-GREWAL EXCEPTION TO LOSS OF BUILDING ALLOCATION, MODIFIED FOR A NINE-MONTH EXTENSION, WITH A HARD DATE THAT BOTH THE ARCHITECTURAL REVIEW BOARD APPLICATION AND THE FINAL MAP APPLICATION MUST TO BE DEEMED COMPLETE BY STAFF IN 30 DAYS; THAT STAFF SEND A LETTER DETAILING PRECISELY WHAT HAS TO BE DELIVERED IN THAT 30-DAY PERIOD; AND IF APPLICANT DO NOT MEET THE 30-DAY PERIOD, THAT A HEARING BE SCHEDULED BEFORE THE PLANNING COMMISSION FOR RECOMMENDATION TO CITY COUNCIL TO REVOKE THE ALLOCATIONS. THE MOTION CARRIED BY A 6-1 VOTE AS FOLLOWS: AYES: ACEVEDO, ENGLS, ESCOBAR, LYLE, MUELLER, WESTON; NOES: BENICH; ASBTAIN: NONE; ABSENT: NONE.**

**OTHER BUSINESS:**

**8) DRAFT FY  
02/03 - 06/07  
CIP**

Commission requested to review the Draft Five-Year Capital Improvements Program (CIP) for consistency with the Adopted 2001 General Plan.

For the benefit of the new Commissioners who were not present at the May 14th meeting presentation, PWD Ashcraft provided brief background information of the City's CIP five-year planning document. He advised that the document is used by the City to forecast major infrastructure improvements over a five-year term. PWD Ashcraft explained that it is not a requirement that a city have a five-year CIP, although it is a requirement if you have the CIP, that the Planning Commission needs to make a finding of General Plan consistency with the projects in the plan. The five-year CIP is then taken before the City Council for adoption, of which the first year of the CIP is then rolled into the budget for adoption by Council.

In presenting the staff report, PWD Ashcraft noted that at the May 14<sup>th</sup> meeting the Commission did not feel they had enough information before them to make the General Plan consistency finding. He advised the Commission that their meeting packet included an outline of the 43 projects listed in the five-year CIP and comments how staff believes the Commission could make consistency finding in most cases directly consistent with our General Plan, and in some cases, more directly with the various master plans that are referenced in the General Plan. PWD Ashcraft pointed out one caveat being that there is no mention in the current General Plan of the library, which staff concluded was because the library is run by the County of Santa Clara. He stated that staff is sure that the library expansion and modernization is consistent with the County's General Plan.

PWD Ashcraft then addressed several of the specific questions that the Commission had raised at the May 14<sup>th</sup> meeting. He stated that headway will be made in terms of meeting the 5-acre per thousand park land development goal if this five-year CIP is adopted. He said that the five-year standard will not be met, but at least some improvements will have been made along the way, as quantified on the last page of the staff report. Another question PWD



Ashcraft responded to was how the Commission could find that all of the sewer projects are consistent with the General Plan, especially the sewer expansion project, if the Commission doesn't know specifically the timing of the improvements to the treatment plant prior to growth so there is no capacity issue. He indicated that he had clarified that every year the regional agency, SCRWA, controls the waste water treatment plant JPA's between the cities of Morgan Hill and Gilroy. They make that determination annually in a capacity analysis and they put those numbers into a 20-year SCRWA Capital Improvement Plan as needed. He stated that currently the planned expansion is two to three years ahead of schedule.

Vice-Chair Mueller commented with respect to the library. He said he did a quick read and felt the library is consistent with policies 19E and 19J in the school section of the General Plan. He stated that he believes the library is heavily used by the School District and school students and thinks that with the expansion they are increasing the joint use. Vice-Chair Mueller expressed concern with how the 10% reduction will be measured, based on the assumption in the traffic study for the overall trips generated by the current General Plan by people going to mass transit or some other mode of transportation. He feels that should be very carefully looked at, and said he would be more than willing to have discussion with staff later about how to possibly go about doing that.

PWD Ashcraft stated that PM Rowe attends all the VTA TAC meetings, so that would be a good forum to monitor this. He added that when the General Plan was being put together, VTA was thinking that fixed rail transit would play a much greater role in less than ten years. However, since developing our General Plan, VTA found out that Measure B revenue has substantially fallen behind, so a lot of the fixed rail improvements, especially CalTran, are going to be years later than they thought. PWD Ashcraft stated that Vice-Chair Mueller's point is well taken, and felt VTA would presently agree that it's going to be longer than that when we get that 10% reduction.

Commissioner Escobar pointed out that the El Toro Youth Program (MACSA) listed under the Park Facilities section of the CIP report, is a part of Community Solutions.

Commissioner Benich commented that he felt it both sad and amusing to him when you look at the last chart of the report where the park land chart is noted. He stated it is just unbelievable that the community playhouse is listed as a park, and that it is amazing to him the extent gone to include things in a park concept.

Commissioner Lyle asked when the third fire station might be online and whether there are funds available to be committed next year? PWD Ashcraft replied that funds are being set aside, but there is no commitment as yet as to the date of construction; however, we will have a CIP sheet that tries to project that by next year. The projections will be for FY 2006-07 for buying the land, doing construction documents and being in a position to build a fire station. So that means it's six years out right now, with the caveat in that CIP indicating if we can find the revenue to staff the fire station sooner, we could build it sooner. He said the staffing of the additional firemen is the problem, not the capital money required to get it built.

Commissioner Lyle stated that he liked what was done with the park's master plan, which provides detail in showing how we are making progress, and he was hoping that staff would have the same detailed information for roads. He indicated the major improvements are very

“iffy” in the current CIP roads plan because they are dependent on outside funding. He also noted there is no indication of backup plans, and no indication that even if all those things were done, the number of dollars being spent there is the proper proration towards what’s required in the General Plan. Commissioner Lyle stated that the analysis is not there, and he thinks that’s needed because if we are falling behind or not making sufficient progress, the City Council ought to know that. PWD Ashcraft stated that staff would be happy to work with the Commission next year and try to work that information in, but will probably need a little help with the quantification. He pointed out that parks are easier because that information is already laid out pretty well in the park’s master plan, but roadways will take a little more work.

Commissioner Lyle questioned whether the at-grade crossing for Madrone should be in the plan for FY 2003-04, not FY 2002-03, if there is an 18-month time period before you get approval to do the design work. PWD Ashcraft replied in the affirmative, and stated that in terms of working on the plan line, some work can be done on the plan line, but certainly cannot be completed until we have PUC permits.

Commissioner Weston asked if the pedestrian crossing for Depot was still planned? PWD Ashcraft stated last month the City Council approved an agreement with the railroad that has been in the works for over two years. The railroad says upon 90 days after they execute that agreement, which left the Public Works offices going to them about three weeks ago, the pedestrian crossing should be under construction within 90 days and complete in 60 days, assuming things run much smoother in the next few months than they have in the last several years. PWD Ashcraft said getting the agreement with the railroad was a real milestone.

Commissioner Lyle inquired if staff was giving up the possibility of putting the third fire station as a joint facility with the new police station. PWD Ashcraft responded “certainly not”! He added that they plan to reserve that land, as there are two acres, and originally police said they needed just over 1 acre, so there should still be land for the fire station.

There being no further questions for PWD Ashcraft from the Commission, Chair Acevedo opened the public hearing.

There being no further comments, Chair Acevedo closed the public hearing.

Commissioner Lyle stated that he was going to vote against this item because he felt the Commission should have more detailed roadway information. He added that he thinks everything that is being done is consistent with the General Plan, but only questioned whether it is sufficient.

**COMMISSIONER WESTON AND VICE-CHAIR MUELLER MOTIONED TO APPROVE RESOLUTION NO. 02-35 FOR THE DRAFT FY 2002-2003 - 2006-2007 CAPITAL IMPROVEMENTS PROGRAM (CIP), WITH THE DELETION OF THE MACSAEL TORO YOUTH PROGRAM LISTED UNDER THE PARK FACILITIES SECTION OF THE CIP REPORT. THE MOTION PASSED BY A VOTE OF 6-1 AS FOLLOWS: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, MUELLER, WESTON; NOES: LYLE; ABSTAIN: NONE; ABSENT: NONE.**

## PLANNING COMMISSION MINUTES

JUNE 11, 2002

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### **CITY OF M.H.- SUBCOMMITTEE RECOMMENDED CHANGES TO RDCS STANDARDS & CRITERIA**

evaluation standards and criteria for proposed residential developments .

PM Rowe requested Commissioner Benich, who served on the Subcommittee along with Commissioners Lyle and Mueller, to briefly walk through the list of proposed criteria changes. Commissioner Benich pointed out that items recommended by the Subcommittee and staff for consideration are outlined in the attached list of the staff report, and the actual recommended changes to the standards and criteria are contained in Exhibit "A", with new language added being shown as underlined text.

Commissioner Benich reviewed the following changes under the Schools category: 1) Page 8, B.2 (clarification of whether a safe walking route exist or is proposed between the project site and existing or planned school, and addition of definition of how distance is measured); 2) Pages 11 and 12, combined items B.3.a and B.3.b, which better defines pedestrian improvements and the value of the improvements commitment. Commissioner Benich stated that they felt those changes would give a broader base from which to work, and provides the City with more improvements than otherwise might have been possible.

Vice-Chair Mueller stated that probably the major change would be that there is a new point for building non-BMR moderate rate housing. The project would get points for committing to the normal BMR program, and in addition, there is a provision where the project could build moderate rate non-BMRs. He indicated that non-BMRs would not be in the City programs, nor be deed restricted, but there would be a price cap and they would contribute to the City's moderate housing stock, which is one of the housing stocks that the City is not meeting in the General Plan. Vice-Chair Mueller noted he thinks those houses could sell in the low \$400,000, but the only caveat being the developer has to keep the actual escrow price cap below this number and that number would change every year. Commissioner Lyle added that this change was done primarily to satisfy the criteria in the new Housing Element.

Commissioner Lyle reviewed the following proposed major changes: 1) Amendment of Municipal Code Section 18.78.340 to raise the maximum number of units within a micro project to 6, which he stated is something that will need to come back before the Commission very soon. He indicated the change would also be that any project that falls into the micro category has to go to staff for review and approval. That would serve as a check against whether there is other vacant properties around the project, or whether there's ownership by the person of other parcels around it, which could prohibit the project from being allowed to participate in the micro competition; 2) Duplicate points. There were a number of places where the same improvement could get points in several different categories and this change was to limit projects from getting 2 points in one area and 4 points for the same improvement in another area; 3) Additional point for on-going projects. Through extensions to loss of building allocations, the project could still get 2 points even if they were being delayed because the project was considered "on time". The Subcommittee added one more point for projects that started early in their allotment year and did not require an extension. He noted that again, the intent of that change was to help the Housing Element, because if the projects start early in their allotment year, they count towards this interval of seven and a half years of which the City have to reach certain numbers. 4) Under the Quality of Construction category, B.5, included performance measure within the Planning Commission point criteria so that it's more meaningful.

Vice-Chair Mueller noted that under the Lot Layout and Orientation category, B.1.f, the

Subcommittee made an additional change that there will be a staff recommendation as part of the Planning Commission point, that's based on the number of times lot layout design changes are required in order to obtain subdivision approval. Also under the Lot Layout and Orientation category, 2.a, referring to 50% views of open space, parks and waterways within or adjacent to the project, Vice-Chair Mueller noted that the view category is modified to where it is now much more subjective in terms of street design and lot layout.

Chair Acevedo opened the public hearing.

Scott Schilling, 16060 Caputo Dr., Ste. 160, stated that he was in agreement, for the most part, with the recommended changes and added that he was also favored of the micro competition going from 5 allocations to 6. However, he expressed some concern regarding the new wording in the Open Space criteria, 1.C, Page 13, which reads "The pathway provided shall be paved a minimum of 7 ft. in width. The proposed pathway(s) cannot be redundant of public sidewalks". His concern with this wording involves pathways that may be private and that might exist through environmentally sensitive areas (around oak trees) where you cannot use concrete and you cannot pave with asphalted concrete. Also with respect to the 7 ft. width requirement, he felt that if you want to do a private pathway that meets a City concrete sidewalk and you want to build it to City standard, the City standard is concrete 5 ft. in width and that developers have used those standards in parks. In summary, he stated by adding this new language he felt it would be getting very project specific, in that it would have to be a project that can do a 7 ft. wide paved pathway, versus a project that may have another area where they can do a pathway; but it either has to be concrete 5 ft. in width or it has to be another material that is not paving because it might be in a sensitive area of drip lines and trees.

Vice-Chair Mueller explained that the 7 ft. width is proposed so there could be a combination of bike usage and pedestrian usage at the same time. Mr. Schilling stated that the 7 ft. width was probably not as much of a concern to him as that of the requirement of the type of material, because there are projects that last year reached the point for putting in pathways that were other than specific paving material. Vice-Chair Mueller indicated the Subcommittee's thinking was that the material type used had to be suitable and durable.

Mr. Schilling then provided comments regarding the Quality of Construction category on page 50, criteria B.5 (proposed project phase(s) judged by the Planning Commission to be superior with respect to overall project excellence). He expressed concern with the wording "that negative performance factors include more than two plan checks and/or projects which submit for building permits prior to receiving all necessary entitlements from Public Works and/or the Planning Division". He cautioned that the way the criteria is worded may not work exactly how the Commission want it to, especially with phased projects. Mr. Schilling continued by stating he would like the language to be more general, because there may be builders that submit to the Building Division and then nothing happens for six months. He also requested the Commission leave more flexibility with this criteria, as often times it is beneficial for the developer to speed up the process and submit, as long as they have ARB approval. He stated he felt the key would be for the Building Division to initially provide comments regarding the performance of the developer during any previous building permit processes, rather than giving input regarding the proposed negative performance factors of this criteria.

Commissioner Lyle pointed out that this is just a recommendation to the Planning Commission and that they would be judging projects on a lot of different factors. Primarily, the Commission would be doing the judging. The idea is that the Building staff input will affect the Commission's view of the overall project, but it is only one factor being considered. Commissioner Lyle suggested amending the wording to read "as one input" instead of saying "will include input" to make it clearer that there are more considerations. After further discussion, PM Rowe was given direction for staff to bring back revised wording for criteria B.5 for Commission review.

The last item addressed by Mr. Schilling was criteria 3.d (Substandard street improvements along project frontage) on page 57 under the Circulation Efficiency category. He pointed out that previously you could score up to 2 points for eliminating existing stub or substandard streets. With the new recommended language, substandard street improvements along the projects frontage do not satisfy this criteria and will have a significant point impact on some of the projects that have received those 2 points in the past years. Mr. Schilling indicated that it's important to recognize that if you take this criteria in the strict sense of the word, there's a big range of what projects have to do along their frontage. For example, you may have a project that is doing full improvements or half the street on an arterial street that might include two 12-ft. travel lanes, a bike lane, a curb and gutter, and then a sidewalk area. That's significantly different than a project that's on a local street that may just have to put in 5 ft. of additional paving and curb and gutter and then the sidewalk.

Commissioner Benich stated that the whole purpose is not to get extra points for something that has to be done anyway by the project, regardless of whether it's on a major frontage road or a small road.

Mr. Schilling reiterated that it's important that it is realized that this recommended criteria have a drastic impact on how projects have been scored, because in the past projects have been given points for providing significant street improvements. He added that there will be a fairly big swing in points from last year to this year if there is no credit given for projects that provide significant street improvements. Commissioner Lyle noted that Mr. Schilling was partly speaking in reference to "grandfathering".

Commissioner Lyle questioned Mr. Schilling as to whether the developer is reimbursed for the extra width required for an arterial street? Mr. Schilling responded that when the old impact fees were adopted, the assumption was made that along arterials the developer was going to do a certain portion of the improvements and the impact fee would pickup the rest. So it does depend on how much widening is required to be done. He added that in terms of being along an arterial, not only does the developer have to put in the street improvements, but they also are dedicating all of those improvements to the City. Therefore, there is some benefit to the City for getting arterials and collectors built for right-of-way. Mr. Schilling remarked "that's a lot of street improvement compared to someone who just eliminates a little existing stub street, making it a little local street their project ties into". He concluded by stating that he did not think that was worth giving them 2 points.

Commissioner Benich shared that one of the driving forces of the Subcommittee is to consciously try to increase the spread among the projects by getting greater diversification and range in the final numbers.

The next speaker was Rocke Garcia, 100 E. 3<sup>rd</sup> St. He expressed concern regarding the following issues: 1) Building non-BMR moderate rate housing, saying that he encourages that change in the Measure P criteria, but he would not like those counted as part of the 10% zoning density calculations; and 2) Under the Open Space category, B.1.e on page 14 with respect to historical sites and landmarks adjacent to the project site being maintained in as natural state as possible, with limited supportive development such as parking facilities, fencing, signing, etc. Mr. Garcia stated that he did not disagree with the change in scoring the criteria from 2 points to "up to 2 points"; however, following up to Mr. Schilling's point of grandfathering, he felt that if those 2 points have been garnered before, so they should also be garnered this time. They should not be penalized a point for something that has been installed or promised.

Dick Oliver, 275 Saratoga Ave., #105, Santa Clara, addressed the Commission regarding the change in item B.3 of the Orderly and Contiguous category on page 20 and 21. He stated that a couple of years ago a provision was added that if you had a development agreement you were able to count that area as being developed for determining your adjacency to adjoining property that's being developed. What's been done now is the development agreement has been eliminated and replaced with final map approval by March 1<sup>st</sup> of the fiscal year the competition is held. Mr. Oliver indicated the problem with this change is that he didn't think it would ever be possible to get a final map passed by the City by March 1<sup>st</sup> of the following year. He continued by saying that what it does is delays any points for that criteria for at least 2 years, as opposed to 1 year, after getting an allocation for an area surrounding or contiguous of your property. He said he felt this revised criteria defeats the very thing that was wanted when the change was made 2 years ago.

PM Rowe stated out that the problem created this past year with the December 1<sup>st</sup> deadline of the development agreement for this criteria, is that it forces the development agreement to come before the Commission before the subdivision map is ready for approval review. Vice-Chair Mueller stated that the problem also is that staff time is being eaten up dealing with reports, when the Commission should be dealing with all of the applications at one time. Commissioner Lyle added that the March 1<sup>st</sup> date is actually 4 months later, which is more liberal than it's been in the past, but agreed the Subcommittee could discuss this matter further.

Another concern of Mr. Oliver's was item B.4.b on page 22 under the Orderly and Contiguous category. He stated points were awarded to a continuing project that is on time, and his concern is that he has two projects which were delayed 9 months by environmental reviews. Therefore, he will not be able to get those points this year because there is no way that he can meet the date unless there is a provision for extensions. Mr. Oliver said that he understands the rationale behind it, but requested the Commission's reconsideration of this proposed criteria. He also suggested the language be modified for the Parks and Path category items B.5.a & b (in-lieu park fees) on page 32 to clarify that the original fee must be paid in addition to the standard in-lieu park fees. This would ensure that you're not creating ambiguity for someone arguing that they will pay the in-lieu park fees only, which precludes the necessity of paying the original fee.

Mr. Oliver requested verification of what the moderate rate home price will be under the Housing Types category criteria B.1.b on page 40, in order to ensure it's consistent with the intent. He stated that if the pricing is around \$425,000, that will be acceptable. However,

if it happens to be \$310,000, the development group is going to have a real problem with that price. Commissioner Lyle indicated that CDD Bischoff, who directed the work that was done on the tables for the Housing Element, would be able to confirm the moderate rate home price by clarifying whether the information used came straight from the BMR tables, or if some other calculation was used. Commissioner Lyle stated that he thinks probably some other calculation used, with potentially a different down payment, and a different percentage of income that could be used towards it. Vice-Chair Mueller concurred with Commissioner Lyle and added that he thinks the price was \$400,000 plus, because the whole idea is to make it so that the developer community can build these houses and not have to subsidize them.

Lastly, Mr. Oliver stated he supported Mr. Schillings comments regarding the substandard street improvements along project frontage. He said they both feel substandard street improvements are like an opportunity point, because they cost a lot of money to do and they provide a benefit to the community. Therefore, they feel they ought to be rewarded for those substandard streets they have improved.

There being no one else present that wished to speak to the matter, Chair Acevedo closed the public hearing.

Commission discussion ensued. Vice-Chair Mueller stated that he was on the Subcommittee and a lot of time had been spent on this item and he felt they needed to listen to the development committee on a couple of the issues in order to figure out what to do.

Commissioner Benich concurred, suggesting some of the issues raised that should be revisited are: 1) Changing the word "paved" on page 13 to "suitable, durable material for the pathways"; 2) On page 21 and 22, review whether to replace "development agreement approval by December 1st" requirement with "final map approval by March 1<sup>st</sup>"; or to change criteria to "development agreement approval and tentative map approval by either December 1<sup>st</sup> or March 1st "; 3) Modify language for the Parks and Path category items B.5.a & b (in-lieu park fees) on page 32 to clarify "that the original fee must be paid in addition to the standard in-lieu park fees"; and 4) Page 50 under project excellence criteria, recommendation from staff for possibly changing the language from requiring "all necessary entitlements from Public Works and/or Planning Division before applying for plan check" to "would submit building permits prior to receiving ARB approval and the filing of an application for the final map".

Commissioner Lyle recommended further discussion and review by the Subcommittee of 1) Double and triple in-lieu park fee points in criteria B.5.A & B on page 32. He stated that with park fees increasing so much, the intent of those criteria changes was to limit the developers' exposure to this. He pointed out that someone could get 9 points in other places in this category and if they wanted to get the maximum of the category's overall 10 points, as it is currently written, they could do so by committing to doing B.5.A, but they would be paying \$3000 a unit to get another point. Commissioner Lyle recalled the Subcommittee previously had some discussion, but did not come to a resolution, about maybe changing the criteria to read "or \$1000 per unit, per point". In that case, if they only needed one point, they could do a commitment for just \$1,000 and not \$3,000. He stated the same situation would apply to B.5.B criteria; and 2) Under the Housing Types "For Rent Projects" criteria on page 43, the Subcommittee added 2 points to this criteria for moderate rate units and

eliminated the “For Sale Projects” criteria 2 points on page 42, because points needed to be dropped out of the category or adding the 2 points for moderate rate units wouldn’t mean anything, as people could max out. Commissioner Lyle stated that since the 2 points were added to encourage moderate rate units, he felt the question should be addressed whether or not the same thing should be done in the “For Rent Projects”.

Chair Acevedo provided comments regarding the Schools category as follows: 1) On page 9, criteria B.2.a, need to further define the average center point of housing in a project to the nearest point on the school ground, because he feels this might be an arguable issue; 2) B.2.a.i & ii criteria on page 9 regarding students crossing railroad tracks, arterial or collector streets to get to school. Chair Acevedo stated that it seemed to him that these criteria are redundant and questioned the need to score points under each, because if students are not required to cross a railroad track in criteria B.2.a.i, then they also would not be required to do so under criteria B.2.a.ii. Commissioner Lyle explained that the difference in the two is that criteria B.2.a.i refers to the current existence and function of a railroad track, an arterial or collector street; whereas B.2.a.ii has to do with a railroad, an arterial or collector street that is designated within the General Plan; and 3) Deletion of B.2.c.iii criteria on page 10 regarding the distance from project and a middle/intermediate school. Chair Acevedo stated that the criteria doesn’t really matter because the School District determines where middle school students are going to attend school. He added that it does not make sense to him that the School District does not use distance in deciding which middle school a student should attend in relation to where they live, so he does not feel that this criteria is helpful.

Vice-Chair Mueller commented that a consolidated effort to raise the benchmark points should be made, because he is concerned that the average top-scoring projects are going to be within one or two points of each other and there will be no real way to determine which one is really the best project. He recommended that initially a discussion with respect to having more differentiation between competing projects be agendized for a future Commission meeting, which would include input from the development community. At that time, the Commission should also look into forming a subgroup right away to begin work so that in a year they might have the work done and be able to implement the scoring criteria that would provide more of a point spread. Vice-Chair Mueller added that there is no way for this to be done for the next Measure P competition, because it will take a lot of thought and a lot of work to accomplish. Commissioner Lyle noted that this subgroup could also recommend scoring point changes for categories to the Measure P Update Committee to amend as part of their review.

**IT WAS THE CONSENSUS OF THE COMMISSION TO RETURN THE ITEM TO THE SUBCOMMITTEE THIS WEEK FOR FURTHER REVIEW AND CONSIDERATION OF THE ABOVE MENTIONED RECOMMENDATIONS AND ISSUES RAISED. THE SUBCOMMITTEE WAS DIRECTED TO RETURN SPECIFIC RECOMMENDATIONS FOR THE ITEM TO THE COMMISSION FOR ACTION AT THEIR JUNE 25<sup>TH</sup> MEETING.**

Commissioner Weston offered comment stating “It seems like one of the things with Measure P is that we used to be really subjective and objective; but we’ve gone away from subjective and now we’re totally objective, so everyone just maxes out the point. The problem with subjective is it throws them into a tizzy, and they can’t figure out how to max



out the points, but at least it gets it to a point where we can separate the projects.”

PM Rowe agreed, stating that Commissioner Weston made a good point, because by going to more objective criteria, the developer pretty well have a formula or script to work from, and that’s been a problem experienced with the Quality of Construction category. All of the projects started looking the same because they all fall into the same criteria.

Vice-Chair Mueller stated “It’s more than subjectivity, because if the subjectivity clouds the picture so the developers don’t know what to do, then that just causes the project to recycle two or three times, and that doesn’t help us either.”

Commissioner Weston added that he didn’t feel that they necessarily wanted to tell the developers what to do, but they do want to tell the developers that they want the best project possible.

Vice-Chair Mueller indicated that the Subcommittee actually have introduced 3 or 4 points that are subjective which will make or break the project in terms of getting an allocation. However, he concluded that he thinks there need to be even more, but right now there’s no point room left to do it.

**ANNOUNCEMENTS:**

**ADJOURNMENT:** There being no further business, Chair Acevedo adjourned the meeting at 12:13 a.m.

**MINUTES PREPARED BY:**

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**FRANCES O. SMITH, Administrative Secretary**